

REMARKS

Claims 1-18 were previously pending in the present application. Claim 1 is hereby amended. Claims 1-18 remain pending as amended.

Claims

Applicants acknowledge with appreciation the withdrawal of the prior art rejections cited in the first Office action. Claims 1, 9, 11, 12 and 18 were rejected in the above-referenced final Office action under § 102(b) as being anticipated by Brunelle (U.S. Pat. No. 5,930,851). Also, claims 1-12, 17 and 18 were rejected under § 103(a) as being obvious in light of the combination of Brunelle and Castellote (U.S. Pat. Pub. No. 2003/0233704). Claims 13-16 were rejected as being obvious in light of Brunelle and Castellote and further in view of Nicollet (U.S. Pat. No. 3,964,472).

In response, claim 1 (and thus all of the claims) are hereby amended to define the side walls as extending essentially upright from the bottom, and to state that the difference in pressure between vertically spaced rows is such that one or more air jets in a higher one of the plurality of rows can expel air at an area of the side wall where one or more air jets in a lower one of the plurality of rows has become effectively blocked by pressure from the water in the basin.

First, the claims thus now expressly recite an air bath in which vertically spaced perimetral rows of air jets in the basin side walls. The prior art does not teach or suggest multiple, vertically spaced rows of air jets that extend around the perimeter of the basin side walls. Brunelle, Carrier and Castellote teach one or more rows of air jets in the bottom combined with a single row (that may or may not extend about the perimeter) in the side walls. Thus, the novelty rejection based on Brunelle is believed to be avoided. Further, combining these references would suggest an inferior air jet arrangement that does not ensure full body air treatment, as is provided for by the claimed invention. While not a basis for the rejection of

claim 1, if it were, the Nicollet would not provide the missing teaching since it discloses only short rows of air jets at a small backrest area of the basin.

Second, the claims now expressly state in effect that a higher row can provide operable air jet(s) in an area where pressure head disrupts air flow through air jet(s) in a lower row. This aspect of the invention is not taught, or even addressed, by the prior art references cited, and provides significant improvements in full body air treatment not realized by the prior art. As stated in paragraph 29 of the specification, this air jet arrangement ensures head to toe air treatment and allows the bather to select more or less agitation, without dead spots that could occur, particularly at the far air jets or when the air flow is decreased. These benefits are lacking from the prior art.

Applicants wish to respond directly to the Examiner's comments in paragraph 5 of the Office action. The Examiner asserts that the applicants' position regarding the air jets being blocked by pressure head, which is now expressly recited in claim 1, does not make sense because he believes that: (1) back flow through the air jet(s) would occur if the air pressure was insufficient to overcome the pressure head, and (2) there would not be meaningful air flow from an air jet that is 5/8" above a "blocked" air jet. As an initial matter, the invention of claim 1 is not limited to a 5/8" vertical spacing of the air jets -- perhaps the Examiner's position would be different if a larger spacing dimension was considered. In any event, if a jet were to become "blocked," back flow could be prevented either by equalizing air pressure in the air manifold or by using a check valve. So, a blocked air jet could arise that adversely impacted the air treatment without destroying the air system. Moreover, despite the Examiner's skepticism, the vertical spacing does provide meaningful air flow from higher air jets when a lower air jet is blocked, and thus, provides for air treatment at that site where there would be none using the systems of the prior art. As the Examiner's skepticism indicates, the improvement provided by the present invention may be somewhat unexpected and surprising, which supports applicants' non-obviousness position. Also, the Examiner may have overlooked (in making the

"finely regulated" comment) that, as the specification describes, the present invention can be used with variable air flow systems in which air flow rate can be set very flow to achieve a subtle air treatment. In this condition, the pressure differential between the rows has great impact and the seemingly short vertical spacing dimension between the rows provides a meaningful difference in air flow.

Furthermore, Castellote fails to suggest the jet arrangement of the claimed invention (alone or when combined with other cited art). For one thing, Castellote does not address the issue of avoiding water pressure blockage of the air jets to achieve fully body air treatment. But beyond that, Castellote teaches away from such a jet arrangement by stating in the noted paragraph 56 that the "jets 14 can be installed indifferently" [emphasis added]. How would such a disclosure motivate one skilled in the art to place the air jets in defined rows that extend about the entire basin and are vertically spaced apart so that they realize different pressure head? Applicants submit that it would not. Thus, the cited patents do not provide a motivation for one to arrive at the claimed invention, absent impermissible hindsight. At best Castellote teaches that various air jet patterns can be used, however, it completely lacks the necessary suggestion regarding the benefits of vertically spaced air jets in the side walls to motivate one to arrive at the claimed invention from the combined teaching of the cited art.

Also, because claims 13-16 depend from amended claim 1, and are thus believed to be allowable for the above reasons, the rejections to these claims based on the combination of Brunelle, Castellote, and Nicollet are not addressed on the merits herein.

Accordingly, in light of the amendment and remarks made herein, the cited prior art is not believed to render obvious the present invention as now claimed.

Conclusion

Accordingly, claims 1-18 as now amended are believed to in allowable form in light of the above remarks. Allowance of these claims is thus respectfully requested.

No fees in addition to the fees for the RCE and 1-month time extension, payment authorization for which is given in the accompanying documents, are believed necessary for consideration of this response. Should any additional fees be needed for full consideration of this amendment, please charge any fees believed necessary in connection with this response to Deposit Account 17-0055.

Respectfully submitted,

Peter W. Swart, et al.

By: 

Steven J. Wietrzny
Reg. No. 44,402
Attorney for Applicant
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 277-5415